

PETER C. ANDERSON
UNITED STATES TRUSTEE
ABRAM S. FEUERSTEIN, SBN 133775
ASSISTANT UNITED STATES TRUSTEE
EVERETT L. GREEN, SBN 237936
UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

In re:

JOHN FITCH and
MARY FITCH,

Debtors.

Case No. 6:13-bk-17103-MW

Chapter 7

**UNITED STATES TRUSTEE'S NOTICE
OF MOTION AND MOTION FOR AN
ORDER APPOINTING CHAPTER 7
TRUSTEE; MEMORANDUM OF
POINTS AND AUTHORITIES**

**[Request for Judicial Notice, filed
concurrently herewith]**

Date: April 25, 2017
Time: 2:00 p.m.
Place: United States Bankruptcy Court
Video Courtroom 225
3420 Twelfth St.
Riverside, California 92501

1 **TO THE HONORABLE MARK S. WALLACE, UNITED STATES BANKRUPTCY**
2 **COURT JUDGE, DEBTORS, DEBTORS' COUNSEL, AND ALL PARTIES-IN-INTEREST:**

3 **PLEASE TAKE NOTICE** that on April 25, 2017, at 2:00 p.m., Peter C. Anderson, the
4 United States Trustee for the Central District of California, Region 16 ("U.S. Trustee") will move,
5 pursuant to 11 U.S.C. §§ 701, 704, and 28 U.S.C. § 586, for an order appointing a Chapter 7 trustee
6 ("Motion").

7 The Court entered an order reopening the Chapter 7 bankruptcy case of John Fitch and Mary
8 Fitch (collectively, "Debtors") to allow the Debtors to amend their schedules to disclose a
9 pre-petition class action claim. The U.S. Trustee wishes to appoint a Chapter 7 Trustee to determine
10 if the claim, and any potential proceeds, are estate assets that may be liquidated for the benefit of
11 unsecured creditors.

12 **PLEASE TAKE FURTHER NOTICE** that this Motion is supported by the concurrently
13 filed Request for Judicial Notice ("RJN") and exhibits thereto, the documents filed in this case, and
14 such argument or evidence as may be presented at the hearing on the Motion.

15 **PLEASE TAKE FURTHER NOTICE** that this Motion is being heard on regular notice
16 pursuant to Local Bankruptcy Rule 9013-1. If you wish to oppose this Motion, you must file a
17 written response with the court and serve a copy of it upon Movant's attorney at the address set
18 forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a
19 written response to this Motion within such time period, the court may treat such failure as a waiver
20 of your right to oppose the Motion and may grant the requested relief.

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22 DATED: April 4, 2017

PETER C. ANDERSON
UNITED STATES TRUSTEE

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24 By: /s/ Everett L. Green
25 Everett L. Green
26 Trial Attorney
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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND AND RELIEF REQUESTED

On April 22, 2013, the Debtors filed a voluntary Chapter 7 bankruptcy case.¹ After reviewing their income and expense schedules, the Chapter 7 trustee determined that the Debtors did not own any assets that could be liquidated and the case was closed.²

The Debtors moved to reopen their case, stating that they intended to amend their schedules to disclose a pre-petition claim for unpaid wages against the Debtors' prior employer (the "Claim").³ According to amended Schedule B, the Claim is part of a class action and may have a value in excess \$95,000.⁴

The Court entered orders on March 8, 2017 and March 29, 2017 reopening the case.⁵ The orders do not contain provisions relating to the appointment of a Chapter 7 trustee.⁶

The U.S. Trustee wishes to appoint a Chapter 7 trustee. The Claim and any proceeds arising from the Claim may be property of the estate. *See* 11 U.S.C. § 541 (the proceeds of property of the estate is property of the estate). Consequently, a Chapter 7 trustee should be appointed to review the Claim, determine if the Claim may result in proceeds, and determine if any exempt portion of the proceeds may be available to distribute to creditors.

¹ RJN, Exhibit ("Ex.") 1, pg. 5.

² RJN, Ex. 1, pps 6-7.

³ *See* RJN, Ex. 2.

⁴ RJN, Ex. 4, pg. 35.

⁵ *See* RJN, Ex. 3.

⁶ RJN, Ex. 3, pps. 29-30 & 31.

1 **II. CONCLUSION**

2 For the reasons set for above, the U.S. Trustee respectfully requests that the Court grant this
3 Motion and enter an order appointing a Chapter 7 trustee.

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5 DATED: April 4, 2017

PETER C. ANDERSON
UNITED STATES TRUSTEE

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8 By: /s/ Everett L. Green
Everett L. Green
9 Trial Attorney
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Office of the U.S. Trustee, 3801 University Ave., Suite 720, Riverside, CA 92501

A true and correct copy of the foregoing document entitled (*specify*): _____
Motion to Appoint a Ch. 7 Trustee

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 04/04/2017, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See attached NEF service list

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 04/04/2017, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtors, J. Fitch & M. Fitch, 914 Church Street Redlands, CA 92374

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 04/04/2017, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Mark Wallace, 411 W. Fourth St., Suite 6135, Santa Ana, CA 92701-4593 (overnight mail)

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

04/04/2017 Everett L. Green /s/ Everett L. Green
Date *Printed Name* *Signature*

Mailing Information for Case 6:13-bk-17103-MW

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

- **Todd B Becker** brief@beckerlawgroup.com, MOTA@BECKERLAWGROUP.COM
- **John F Brady** johnbrady.cbg@zoho.com, jfb.ecf@gmail.com
- **Howard B Grobstein (TR)** hbgtrustee@gtfas.com, C135@ecfcbis.com
- **United States Trustee (RS)** ustpreion16.rs.ecf@usdoj.gov

Manual Notice List

The following is the list of **parties** who are **not** on the list to receive email notice/service for this case (who therefore require manual noticing/service). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

Creditor List

Click the link above to produce a complete list of **creditors** only.

List of Creditors

Click on the link above to produce a list of **all** creditors and **all** parties in the case. User may sort in columns or raw data format.